

# **The Mexican ParaState and human rights as mediation**

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*"Power tells us, for example, that we have to choose between being optimistic or pessimistic." The pessimist sees the glass half empty, the optimist sees the glass half full, but the rebel realizes that neither the glass nor the water it contains belong to him and that it is someone else, the powerful one, the one who fills it and empties it at will. The rebel sees the trap on the one hand, but also sees the spring from which the water comes out "*

**Don Durito of the Lacandona (Mark, 2003)**

## **1. An introduction, a concern**

Throughout the ten years of activities the Human Rights Node (NODHO) in almost every case, in every accompaniment of social movements rights seemed to travel through strange alleys where the dividing line between the political and the legal seemed to vanish. We found that many cases were resolved from the actions of formal State actors linked to informal actors but who held some form of power linked to the public sphere. These actions that arose from political decisions of those who were identified in our complaints as aggressors were legally framed after being decided and concretized, and the law became a mere formality. In most of our cases, we found structures that we could not identify, that didn't seemed to be part of the State institutions, and that nevertheless acted through them. In these years we were feeling and then understanding that in Mexico something strange was happening with the State, that power relations have been configured in ways non-explicit throughout historical processes that go back to before Mexico was Mexico and that also transcend the boundaries of its borders. Little by little we confirmed that behind the curtain of rights, of democracy, of due process, of the visible appearance of the State there were flows without name, without a formal constitution, but that define the form that justice takes in Mexico. That is why in this text I intend to find a name for those structures with which from the NODHO we related and confronted for a decade, and above all try to locate human rights as a conceptual and discursive tool in the relationship with and between those structures. This text is an effort to understand and conceptualize those ghosts that we have faced for years.

## **2. Rights and power**

Human rights are part of a political discussion on justice and have been raised as a strategy to limit power, however this is not obvious. So far in the twenty-first century, human rights have become a recurrent discursive resource in almost all institutional areas, in almost all countries that are explicitly democratic, which has made them a legitimating factor of power and perhaps a curtain that hides injustices.

Documents as old as the Cyrus Cylinder 539 B.C. of ancient Mesopotamia have come to be considered as declarations of human rights, however, although they are universal and timeless, human rights can not be dissociated from the normative flow of modernity, from the concepts of freedom, equality and fraternity (or solidarity). from the idea of human emancipation built from the universalist values of the eurocentric Age of Enlightenment.

After the drafting of the Universal Declaration of Human Rights in 1948, human rights begin to establish themselves as a factor of legitimation of power and of the State and then starts a number of listings, categorizations and combinations rights that have become international treaties, clauses of commercial and military agreements, generating a framework of rights that reconfigures power relations or adjusts them. his means that *"...there are many constitutional rights established in many catalogs, starting with the UN Charter, which only in its selection in practice transforms them into operating statements aimed at changing cultural codes and, therefore, social practice ."* (Castells, 2000: 16).

This does not mean that social practice is of greater justice or that power is more limited, it does not even mean that human rights are current law. Arroyo Velasco (1990) proposed them not as legal rights, as this is contingent on its positivization in legal frameworks, but as claimable moral rights regardless of their recognition as part of the legal structure of a State. He even raises the issue of human rights as an attempt at a practical philosophy that attempts to configure a transversal line to three dimensions of the normative and evaluative: ethics, law and politics. He argues that their current relevance is due to the fact that they possess a moral substratum that is proposed as a minimum code of universally accepted ethics; to their political virtue, both because they have become supreme legitimating instance of public power, and its recurrence in ideological arguments and their controversial use; and finally, *"they have an internal trend towards stable legal codification, that overcomes the constantly reinventing character of morality, becoming able to be configured in such manner at any time, as recognizable social rights"* (Velasco Arroyo, 1990: 270).

Anibal Quijano (2001) characterizes human rights as a matter of power and the struggle for them implies a struggle for democracy. According to him, power means a dispute over the control of vital areas of social existence such as work, sex, subjectivity and collective authority. These power relations are constituted in turn by three elements: domination, exploitation and conflict. Human rights are from this perspective rights related to each of these areas. In this context, control operates through the hegemony of certain social relations, which in our system are translated into the control of work through exploitation, the control of sex through patriarchy, the control of subjectivity through of knowledge control and control of collective authority through the control of institutional violence.

The emergence of power is inevitable in any network of relationships, it is a by-product of the human organization of collective life and becomes one of the impulses of the relational flows of that collective life linked both to survival and to the production of meaning . One could say then that power relations that arise from organized human society take shape in the ability of some to decide on the survival of others and the possibility of some to configure the sense of meaning of others, and the possibility of

transforming the collective. This means that organized human life, to be able to be so, establishes common criteria of coexistence, it does so in a way that can sustain a balanced conflict, that is, a set of precepts that prevent the very tension of collective life from tearing it apart.

Quijano's approach to control leads us to consider the relationship of human rights with another factor that legitimizes power: force. The statement that *"the use of force implies an intimidating influence on the surviving subjects under a similar rule, which serves to reaffirm the power relationships to those subjects"* (Castells, 2009: 34) implies a capacity of establish and rule over others, where power becomes the possibility of some to be exempted from the common rules and thus impose their will over those over whom they exercise that power. It is important then to understand power not as a monolith but as a network of relationships where *"there is not, therefore, a single point from where all of them come out as if by emanation, but an intertwining of power relations, that in short, makes the domination of one social class over another possible, of one group over another"*(Foucault, 2012: 42).

To understand how power is set is necessary to make it tangible in those moments when these relations are manifested, become visible beyond the discursive constructions or explicit regulatory frameworks, meaning that *"it is about capture power in its ends, in its last lineaments, where it becomes capillary; meaning, to take power in its more regional, more local forms and institutions, especially where that power, as it outflanks the rules of law that organize and delimit it"*(Foucault, 2000: 36).

This would imply then that justice is the way these common provisions are set up and define the meaning of what is of each person, put another way are *"the principles that free and rational people interested in promoting their own interests would accept in an initial position of equality as defining the fundamental terms of their association "*. (Rawls, 1979: 24).

Then also it implies that power is manifested at the time that some are able to corrupt those common precepts to establish their will as a common precept, to which justice opposes from the common precepts. In this dialectical relationship between power and justice lays the discussion about rights, about which ones they are, who can demand them and how they are protected.

Entering the discussion about justice almost inevitably leads to talk about the way in which it is concretized, that is to say, the Latin "ius" and its translation as "to each one his own" leads to complex structures that define and delimit it. Raúl Zibechi analyzing the Aymara communities in Bolivia approaches to community forms of justice which he understands as *"... a set of cultural practices of indigenous peoples seeking to overcome their conflicts to maintain the continuity of their communities"* (Zibechi, 2006: 143) . He categorizes them as non-state forms of justice, however he identifies justice and law as social relations. Moreover John Rawls states that the primary purpose of justice *"is the basic structure of society or, more accurately, the way major social institutions distribute fundamental rights and duties and determine the division of the benefits from social cooperation"* (Rawls,1979: 20), in other words: the modern State. The forms of justice relationships referred by Zibechi are part of a daily dynamic that reproduces and reconfigures them simultaneously, are part of the organic evolution of a community. Justice regulated by an institutional structure as described by Rawls is more akin to that which frames the concept of human rights, that relationship that Zibechi critically called between *"legal entities"* (Zibechi, 2006: 142).

### **3. Rights and favors**

Talking about justice and the State leads to talk about norms. Hans Kelsen (2007) defines the State as an ordering of society, a system of norms. Understanding the norm not as what happens or will happen, but what should happen. The State is a supraindividual will understanding that will as the *"objective validity of the normative ordination"* (Kelsen, 2007: 107). In addition, this author claims that the acts attributable to the State or acts of State are those that involve the action of materializing the power of the State in an action by those empowered by the State and public recognition of their ability to exercise this actions as acts framed in the State. These actions must correspond to a specific rule, to an order that has been assumed to be in effect.

According to Kelsen (2007), a defining characteristic of the State in comparison with other forms of community or society is its coercive character. This coercion provided by the State is exercised by a person empowered against another who violates the norm with his or her behavior. The coercive apparatus of the State is then the legal order. Taking this into account the power of the State depends on its ability to subdue and dominate from a current order. To this must be added that the state is personified in those that it authorizes, those who instrumentalize the current order.

That said, if we think that those authorities are human beings that from that position externalize their will, that of the group to which they belong or feel attached, we can infer that the abstract current order that lands on specific human authorities can be resignified or even manipulated to fulfill a function of domination of one social group over others. That may mean that the existing order is corrupted, but perhaps if the resignified existing order, corrupt, is legitimated, a breakdown of the basic structure of society occurs and then its reorganization from a paradoxical conception, that of unjust justice. There may be a formally defined structure of the State, but there may also be an informal State based on the ability to bypass the limitations of the formal State and that is where true power relations are exercised and what allows the system to flow. In other words, one could say that the system is not corrupt, corruption is the system.

The informal state becomes in fact, from its legitimacy in the social quotidianity, the current order, the State and turns the formal State in a governance mechanism from the corrupt redefinition of the positive norm. Manuel Castells in the context of globalization spoke of a *"double movement of the nation-state towards international cooperation and to the devolution of power to sub-national settings, that leads to the construction of a new institutional system, made of networks of governmental bodies at different levels, articulated to non-governmental structures"* (Castells, 2000: 12) that would configure what he calls a network-State that would operate behind the scenes of an apparent sovereign nation-state but that actually would combine a series of flows and public (government bodies), private (companies) and para-public (NGO's) actors.

Moreover, Boaventura de Sousa Santos (1999) spoke of the emergence of societal fascism disguised as democracy. In the conception of the modern State citizenship establishes who are legal members either by their parents' citizenship (*ius sanguinis*), by birth within the territory of a sovereign state (*ius soli*),

by marriage or naturalization. In all cases citizenship is what distinguishes in a State its members from foreigners who are not. Throughout history, since the concept of citizenship exists it has been a distinction between those who can actively participate in political life and especially those who can demand respect for their rights and those who cannot. In ancient Greece there was a distinction between citizen and slave, and for centuries women were not considered citizens.

In today's societies citizenship is considered a fundamental right, however the fascist spirit referred to by Santos seems to flood States today. Hitler (2003) wrote a little less than a century ago that in the Racist State, unlike other states, in Nazi Germany there were not only citizens and foreigners, but foreigners, citizens and subjects of the State. This last concept, that of the subjects is particularly terrible, because the right to be a citizen depended on the confirmation of the race, health and patriotic conscience of the subject. The subjects were not property like the slaves, but they were legal subjects without the possibility of demanding their rights.

The concept of citizenship of Nazi Germany seems to resonate like a distant echo in the daily exercise of citizenship in most current national States. Effective enforcement of rights is a privilege that only some citizens have, access to justice is a global problem for reasons of "race", ethnicity, class, caste, gender, among many others.

Besides the element of citizenship, the modern State is based on democratic systems of government, that is, where citizens decide directly or through representatives their form of government. Democracy has become the form of government to which most of the nation-States formally tend in the world, however, these formal democracies are not necessarily systems where the decision of citizens is what shapes the public. Wallerstein says that stable democracies maintain domination, Rancière (2006: 297) goes a step further by stating that *"democratic society is nothing more than a contrived image that aims to support one or another principle of good governance. Societies, today as yesterday, are organized by the play of oligarchies."* Aristotle himself claimed that a citizen in a democracy is not such in oligarchy. This conception of oligarchic States translated into the current context means a network of power relations between closed groups, a kind of clan network.

There are several conceptualization to discuss states that have lost cohesion and institutional strength. There is talk of failed States, but there are perfectly functional States whose everyday life is not governed solely or even primarily by their legal frameworks or formal institutional structures but by a relationship that emerges in the flow between formal institutions and actors and informal institutions and actors, and especially through unwritten codes, but no less clear and operational. There is a State formally formulated and instituted and there is another one related and interwoven with it but it has an informal character and is governed by non positive norms, a ParaState. In this sense we cannot say that it constitutes a State that gets corrupted, but one that is the agent of its own corruption.

We are then faced with a paradoxical current order; on the one hand we have a formal current order, a national State consisting of legal frameworks and institutions to represent through democratic mechanisms the decisions of each of its citizens and protect their rights; Moreover we have an informal current order, a ParaState that is built from networks of governmental and nongovernmental organizations that give shape to the public sphere, of oligarchies with the ability to exercise and

demand their rights, and subjects that are legal subjects but that more than having rights receive favors. In each case, sovereignty resides in different subjects, whereas in the first case it formally resides in the people as a whole, in the second the idea that the sovereign is the one who can be exempted from the law is confirmed. This paradox results from the relationship between State and ParaState, justice becomes diffuse, legal codes and State constitutions become less clear and absolute, and human rights take many forms.

The Mexican ParaState is a historical construction where power relations go back to the time before Mexico was Mexico get connected. Forms of power in prehispanic civilizations, Mesoamerican in particular, underwent a profound transformation from the Spanish conquest and especially after the fall of Tenochtitlan in 1521. It is from that moment that the logic of colonial power begins to take shape, when the Spanish Crown begins to favor the process that would convert the conquerors into colonizers. This element, that of coloniality, profoundly shapes the relations of power in Mexico. As suggested by Anibal Quijano (2000: 1): *"coloniality of power is a concept that realizes one of the fundamental elements of the current pattern of power; the basic and universal social classification of the world's population around the idea of "race"*.

In the process of colonization of the New Spain power is reconfigured through a complex caste system intended not only to consolidate the cultural hegemony of the conquerors but also, without reaching the point of the extermination of the indigenous population, it was indeed subordinated to the Spanish population. This order was based on the proportion of "white blood" that a person had and that resulted from the mixture of the Spanish, indian and black population; but aside from the skin tone, also taking into account the legitimacy or illegitimacy of a birth, the condition of slavery or freedom and the lineage of the wife. In this system it is interesting to mention that at the top of the social pyramid were the "pure blood", that is to say the Spaniards of peninsular origin and in second term were the "pure race", the creoles, that is to say those of purely origin Spanish but born in the New Spain. This distinction would later play an important role in the creole discontent that would lead to a rupture between the novohispanian elites that would be an important factor in the outbreak and the definition of Mexico's war of independence.

Those three hundred years that the territories that now make up Mexico were a colony of the Spanish empire deeply marked the relations of power and established a caste system that still lingers in the Mexican imaginary. But the domination relationships inherited by the Colony are not limited to the caste system. The City of Puebla is an excellent example of the deep roots of coloniality, it is in fact a colonization experiment. During the early years of the Colony, according to a report by Juan Salmerón (Hirschberg, 2000), there were a lot of Spanish landless conquerors converted into mercenaries and brigands. Together with this the Spanish Crown required a settlement between Mexico City and Veracruz; as well as a military bastion in the south center to contain the Huejotzinga, Tlaxcalteca, Cholulteca and Mixteco peoples, among others. In this context, Fray Julián Garcés, Fray Agustín de Vetancourt and Fray Toribio de Benavente "Motolinía" propose the creation of a new population, of a colonial experiment, which is left in charge of Juan Salmerón himself.

From 1532 to the time of decreeing that the mastery of the Indians resides with the King, the Spanish Crown decreed that the city of Puebla should be governed by *"the richest and most endowed and of better conscience and life and fame preferring married conquistadores"* (Martin, 2002: 25). Thus forming a protoaristocratic elite of Spanish origin that despite reconfigurations have remained as an relevant influence in formal public power since colonial times to the present day despite the institutional and political reconfigurations. In an analysis of the political evolution of the city, Oscar Soto Badillo (2012: 384) concluded that in the case of Puebla, where there is continuity in the urban oligarchy, *"power becomes a machine of which no one is the absolute owner but it acts as if it was a personal patrimony"*. This statement about Puebla seems to be applicable to many other cities and regions of Mexico and the patrimonial character of power is a clear legacy of that protoaristocratic logic that engendered during the Colony.

While castes and domination by the Spanish elite is very important, in the same period arises a figure that would define much or more deeply the logic of relations of Mexican power, the cacique. In a royal decree dated February 26, 1538 (Lenkersdorf, 2016) the Spanish Crown prohibits the indian authorities to be called "lords" and determined that they could only be called "caciques" with the intention to establish a clear distinction and affirm the preeminence of the Hispanic authorities. With the hegemony of the Castilian political forms, the diversity of indigenous titles and hierarchies vanished from the official language replaced by the term "cacique" as the only one to refer to any indian authority.

The term cacique began to occupy a discursive place and those called caciques began to play a role in brokering power relations in *"the margin that opens between the law all agree to abide by, and the practice where disobedience is negotiated, there is where the influence of intermediaries is rooted"*. (Escalante, 1999: 292). The term cacique evolved to refer to the intermediation and power relations that articulate heterogeneous systems of power that exist within a main system substantiated in *"... the existence of powers, imaginary and values of old type, in societies where the legal system of reference of modern type denies all legitimacy to the powers of old type"* (Guerra, 1992: 184).

The cacique is the pivotal figure of the Mexican ParaState, is the one that articulates the dominated with the dominators through an extralegal system (not necessarily illegal) but that operates in connection and even coordination with the formal institutions of the State. The caciques allow oligarchic groups to have influence in remote areas foreign to them, from indigenous territories and neighborhoods of the urban social periphery, to trade unions, guild organizations and sectors of the informal economy. This is particularly important in times of inflexion of the formal State, as in election times, in times of economic or political crisis or social upheaval. On the other hand, the cacique represents for those under his influence, the possibility of accessing public resources as favors through a client logic conditioned by obedience.

In the power relationships network that make up the Mexican ParaState the relevance of a cacique is determined by their ability to distribute favors and the scope of his territorial control. Cacique dynamic gave power and shaped structures such as Antorcha Campesina that has under what could be called paramilitary control multiple formal municipalities in central Mexico; or union leaderships such as the National Union of Education Workers (SNTE), the largest union organization in Latin America which

controls hundreds of thousands of teachers and that is a determining force in their work situation, their political-electoral actions and even in the way they teach.

Another figure that has historically been fundamental to understanding the political configuration of Mexico is the caudillo who emerges *"by the absence or weakness of a central authority, a disjointed society and an institutional breakdown"* (Almeida Sánchez, 2016: 23), as has occurred in Mexico in moments of crisis and rupture such as the war of independence or the Mexican Revolution of 1910. The caudillo becomes a unipersonal figure who in turn becomes an ideology himself. Their approaches and actions become a system of ideas that give certainty to those who follow them in the midst of an uncertain environment. The caudillo is a charismatic and ideological figure capable of moving between left and right ideologies without problem while fulfilling the purpose he has established. Only in this way can we explain the close collaboration between figures like Lázaro Cárdenas, whose presidency had a socialist and liberal orientation, and Maximino Ávila Camacho, whose power and government in Puebla was consolidated by Cárdenas, but who was characterized as conservative and of close proximity to the Mexican capitalist elites.

We then have in the configuration of the Mexican ParaEstado relations of power articulated in three points: colonial oligarchies that sustain a social imaginary of castes; caudillos that generate cohesion from ideologies constructed from pragmatic purposes; and caciques that articulate the relations of domination through control and favors. Formal institutional State officials often fall in the previous figures, despite their basically informal nature, either as mayors, governors, presidents, congressmen, senators or positions within the public administration in its various bureaucratic structures. Thus, while the formal, modern, democratic, constitutional, republican State establishes a relationship between citizens who have and can demand their rights; on the other hand, the social dynamics move daily in the relations of the ParaState where there are citizens with rights and the conditions to give shape to the public sphere, and subjects with merely nominal rights but who are actually subject to favors conditioned by their obedience or adherence to those figures capable of exercising power.

A brutal result of this dynamic in the Mexico of the 21st century are the drug cartels, where a capo with the characteristic of a caudillo has a hegemonic power over large territories and networks of people at a global level, which he maintains through hierarchical structures based on control and favors regulated by cacique-like figures, many of them within or closely linked to formal institutions of the Mexican State, and where the oligarchic groups play an ambiguous role between denunciation and complicity, as confirmed by all the money laundering scandals and corruption cases linked to organized crime.

In the public discourse that emerges between the ParaState and the State human rights are an important part, but they are in way that makes them a mechanism that reproduces the same relations of domination, not limiting to power but legitimizing its abuses. This situation recurrently allows the dynamics of dispossession, containment and legitimacy that maintain and sustain a social stratification of castes, where there are relations between oligarchic groups that based on their interests and negotiations negotiate and shape the public sphere, in a network where the caciques operate as what Castells calls links and caudillos as programmers. It would not be honest in the case of Mexico to speak of the existence of a democratic State of law when the operating current norm is an oligocratic (a



system where the command is in the oligarchies) ParaState where rights, even when they can be recognized and legislated, in reality are granted or denied according to the checks and balances among the elites. In short, rights are enunciated, but they work as favors in a symbolic-normative space between the State and Para-state.

#### **4. Rights and mediations**

These State and ParaState structures in Mexico joined the transformation processes of the State as a result of globalization. In the process of globalization, Ulrich Beck (2003) points out two parallel processes that permeate the states and societies: the human rights regime and the neoliberal regime. In this sense, the discourse of human rights globally legitimated allows to intervene in violation of State sovereignty; as it happens with transnational financial mechanics. Thus, in "weak" States are subject to the intervention of the triad of humanitarian altruism, market interests and imperialism of "strong" States. This weakness of States is in turn a result of the same process of globalization as noted by Saskia Sassen (2007), where the State becomes a managing body of institutional and legal conditions in a country to make way for global financial flows. In these processes Beck (2003) identifies a translegal domain that is neither legal nor illegal, nor legitimate or illegitimate, it means shared sovereignty between states and global organizations. This translegal domain is a power that among international legal loopholes and legal contradictions founds law.

On the other hand when Naomi Klein (2007) argues that the shock doctrine is one that involves taking advantage of conditions of vulnerability to foster the acceptance of deep political, social and economic restructuring after disasters caused by natural phenomena such as hurricanes, or humans such as wars, also explains a new phenomenon that is the corporate State, a dynamic in which those who hold the State's power are directly linked to transnational corporations that turn reconstruction into a highly profitable business.

These flows between state and non State entities refer to Castells' notion of a network-State, a set of information flows and relationship between actors that manage the public sphere in a transterritorial and translegal way, where formal national States are turned into management bodies for regulatory conditions for capital flows and population containment. Thus, a process in which States become competitors in the global market of national management. This means that a national State becomes relevant when it has the ability to provide the best conditions for global elites and their financial flows. The State must be profitable.

Some of this profitability has to do with its internal coercive capacity, with its ability to generate security conditions for capital flows. In this sense, Sergio Rodríguez Lascano (2015: 50) argues that the national State from "*being the regulator of competition or factors of production, today is a mere instrument of internal security so that the destruction of the nation is carried out under extreme vigilance*".

However, transnational corporations need to maintain an aura of legitimacy, understanding it as that which depends on "*the consent obtained by building shared meaning*" (Castells, 2009: 36). In the

global world and as indicated at the beginning of this text, human rights are a shared almost globally as something that must be respected by anyone who holds some form of power. It is no coincidence that corporate social responsibility has become a discursive constant in almost all business environments. Nike, Gap, Levis, Microsoft, Starbucks, almost all large corporations have had to include in the symbolic building of their brand a component linked to human rights. Although it is also not a coincidence that all have been reported at one time or another for practices that violate human rights. In the dynamics of the global market the appearance of respect for human rights is good business. This implies that the competitiveness of a State within a global network-State depends on three capabilities: dispossession, containment and legitimation.

Dispossession as noted by David Harvey (2004) is currently the way in which accumulation processes can be produced, requiring institutional mediations that establish conditions that allow the entry of investments in its territory and generate profits from the resources found there. An example of this in Mexico are the mining concessions given to companies, of national or foreign origin, but all linked to transnational capital flows. A lot of these concessions can be found in indigenous territories and in most of these cases they have faced processes of direct resistance from the local population affected or potentially affected. In this case, the ability of the Mexican government to strip those territories from their owners is critical for the mines to be built, exploited and provide results that can mean profits reflected in the quarterly reports that companies submit to their shareholders. These processes of dispossession are not limited to territories, but also to elements found in those territories, such as water, flora, fauna, genes, etc.

Containment involves the ability of a nation State to manage the social tension produced by the contradiction of interests between groups and organizations involved in the global financial market and the population living in areas where those interests intend to land. This has resulted in various forms of containment, which can range from negotiation to co-optation, or in many cases violent repression. In Mexico we have examples such as San Salvador Atenco in 2006, where the population of that community was opposed to the construction of an airport which resulted in violent repression and multiple cases of sexualized torture; or a recent analysis explained in a talk by Sergio Rodríguez Lascano linking the disappearance of 43 normalistas (teacher trainees) from Ayotzinapa with the growth of the activity of organized crime groups and mining companies in that same region of the state of Guerrero. In Puebla there is the example of the increase in the last twelve years of the use of imprisonment (through prosecutions for ordinary crimes) as a pressure mechanism for policy disaffected groups, both through the imprisonment of their visible leaders, as through the imprisonment of anyone linked to a discontent sector.

Legitimation is what keeps the above processes without shattering the system. The process of legitimation implies that any action needs to be framed in a shared meaning of what is acceptable. A dispossession ceases to be one if it legally becomes an expropriation and if it is publicly justified as something done for development and the common good. A violent repressive action is justified if it is framed legally and publicly as appropriate use of force against troublemakers, criminals or terrorists. Legitimation is a process that, although it includes the use of legal frameworks to justify actions of

State and the use of media strategies to influence public opinion, has to do with the hegemonic thinking of a society, with its cultural and moral setting, with the imaginaries that shape it. A dispossession action or a repressive act may be perfectly legal, but its legitimacy can still be questioned. This is where a questionable action by any person or group institutionally empowered to exercise State power requires strategies to reduce the political cost of its brutality. The concept of common good is one of the main elements able to legitimize violent State actions, but it is also true that it is unstable ground.

This global context of network-State, of translegalidad, of social shock management and hegemony of human rights as a paradigm of justice is connected with the dynamics of Mexican ParaState and its cacique, caudillo and oligarchic groups dynamics. In the schizophrenic relationship of State, ParaState and network-State public discourse becomes a way of referring to everyday reality in terms of the modern State and at the same time hide their true dynamics, public discourse becomes a way of saying to not say. Silvia Rivera Cusicanqui frames this as a function of colonialism where *"the words do not designate, but conceal, and this is particularly evident in the republican phase, when they had to adopt egalitarian ideologies while palming citizens' rights to a majority of the population"* (Rivera, 2014: 20).

Another important factor to consider is that we live in a network society that is configured with increasing intensity through information flows and symbolic exchanges via electronic communication technologies. These electronic exchange networks and relationship have cracked the global-national-local classification in regards to the public discussion to generate new sets from affinities and non territorial relations. In this context, the discussion on human rights has become more complex, because although its significance has a dominant role at a global scale (which does not mean everywhere), also has its interpretation and reinterpretation from dissimilar cultural backgrounds and contrasting ideological positions.

Human rights remain a modern vision of justice framed in the State, where what prevails are rigid legal frameworks very difficult to modify. Moreover, human rights pass between the cracks of legal norms and judicial systems, having intersections with them but not being entirely a part of them.

Human rights have enormous relevance because they are an assimilable legal possibility for a world of States in reconfiguration and network societies constituted by information flows. In this sense, human rights have on the one hand a legal status that allows them to crystallize into positive legal frameworks, but also there is their ethic character that allows them greater flexibility as a reference that goes beyond legal frameworks and is able to question them. Moreover, its political character is part of a modern and colonial conception of justice, meaning that from human rights it is not possible to think a form of human organization or justice that transcends the State and its own configuration source causes them to tend to be absorbed by the logic of colonial justice taking rigid institutional forms characteristic of the State and its civilizational conception, or to be an instrument of legitimation of the dynamics of ParaState. A third possibility is that even if they do not have the conceptual possibility to rebel against the system of which they are a part of, they can be used as tools of resistance.

All this has made human rights a mediation in communicative terms, a symbolic field where the sense of justice is argued. If we understand the concept of mediation as a dialectical process involving

organizations in the circulation of symbols (Silverstone, 2002) and as part of the articulation between communication practices and social movements (Martin-Barbero, 1987), it helps us to see that rights become a symbolic space and whose meaning is not restricted to what is stated by positive law, but by current norms explicitly recognized in legal frameworks and many others are not. However, the agents of this mediation are not cultural industries, nor only the media but also the political and legal institutions, NGOs, social movements. In the case of Mexico, human rights have become a mediation where the meaning of justice and of right is disputed between State actors, the ParaState and those who resist them.

## **5. An unconcluded conclusion**

The route of this text inevitably leaves many questions to be explored and it does not abound in specific cases or specific experiences that arise the concerns, processes, structures and dynamics that I try to analyze here. This text tries to find meaning in this complex network that is power in Mexico and that flows in what is termed as the ParaState. Mexico is a peculiar construction, is a set of territories with a huge diversity of world views that coexist framed in one nation-state. We are in North America, but also are the last corner of Latin America. We have a bifurcated root between a world that survives and has resisted for over 500 years and the aspiration to be part still of our colonized origin. Mexico is still being built from historic structures rooted in the most local dynamics and also convulsed by a global world crisis. All this and many other factors make Mexico a seemingly inexplicable contradictory country. This is precisely why it is essential to find names to these phantoms of power that recurrently elude our analysis and make domination relationships endure behind democratic curtains.

In this strange environment that is Mexico, its ParaState and its power relations is where many of us have tried to use human rights to confront injustice. At first it seemed that the defense of human rights is a clear, delineated path, structured, with international treaties, urgent actions and a large number of mechanisms developed and tested by NGOs specialized in the field, but gradually what was clear unveiled the mist that it hid. Eventually we discovered that human rights have limits, many of which have been raised here. We were finding ourselves with the fact that human rights arise and are part of the same system that we face, that the structures and institutions created to promote and defend them often are legitimizing their violation. We also found that human rights are a communicational tool that moves between the legal and the ethical and that serve as a guide to find the points of contradiction between the State and ParaState. We found also that in a globalization process where the State is in crisis, the ethical debate gives justice greater fluidity that through the information flows of the network society can become a tool to confront injustice, to defend ourselves and the to be able to resist.

When we founded the Human Rights Node it was because we decided to confront these injustices that we perceive, that we feel, not as violations of legal frameworks or abstract concepts, but as a stench of cruelty that suffocates dignity and forces us to find everything that originates it. This analysis of the ParaState and human rights is a step, a proposed gaze that still needs to walk and that still has to be confronted to the scrutiny of the toughest evaluator, reality.

## 6. References

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